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**PRE-APPEAL BRIEF REQUEST FOR REVIEW**Docket Number (Optional)  
8540G-000058/CPA

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]

Application Number  
10/080,754Filed  
February 22, 2002First Named Inventor  
Gerald W. Fly et al.On October 11, 2005Art Unit  
1745Examiner  
Carol Chaney

Signature

Typed or printed name David A. McClaughry

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor

☐ assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)

☒ attorney or agent of record.

Registration number 37,885.

☐ attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 \_\_\_\_\_

Signature

David A. McClaughry

Typed or printed name

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Telephone number

October 11, 2005

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below\*.

☐ \*Total of \_\_\_\_\_ forms are submitted.



**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Application No.: 10/080,754  
Filing Date: February 22, 2002  
Applicant: Gerald W. Fly et al.  
Group Art Unit: 1745  
Examiner: Carol Chaney  
Title: FUEL CELL WITH VARIABLE POROSITY GAS  
DISTRIBUTION LAYERS  
Attorney Docket: 8540G-000058/CPA (Client Ref. H-205702)

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Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Sir:

In response to the Office Action mailed July 11, 2005, please consider the remarks set forth below.

**Remarks** begin on page 2 of this paper.

## REMARKS

Applicants submit that there has been clear error in the Examiner's rejections under Cipollini (U.S. Pat. No. 6,258,476, hereinafter Cipollini). Specifically, the present invention has been rejected based on references that do not teach all of the recited elements of the claimed invention.

The Examiner states that Cipollini discloses a non-porous impermeable separator plate. On page 6 of the Office Action mailed January 13, 2005, the Examiner admits that the plate in Cipollini is porous. However, the Examiner argues that although the plate structure has fine pores, in operation the presence of water fills the pores. The Examiner further argues that the presence of water in the pores prevents reactant gases from migrating therethrough, rendering the plate impermeable to gases. Applicants respectfully submit that these arguments are not appropriate, as they ignore the positively recited structure of the separator plate of the present invention.

First, as recited in claim 1, the separator plate of the present invention is non-porous. The structure of the separator plate in Cipollini is porous. This is conceded by the Examiner as noted above. However, the Examiner maintains that the plate is "operationally non-porous" through the introduction of water to the pores. Applicants have further distinguished the separator plate of the present invention does not allow water to pass therethrough by adding language specifying that the plate is impermeable.


This impermeability is not disclosed by Cipollini, which discloses a separator plate that is at least permeable to water. The Examiner relies on the fact that the separator plate in Cipollini is impermeable to gases when the pores of the plate are

filled with water. As a result, the Examiner appears to require Applicants to provide a list of what the plate is impermeable to in the claims. Common definitions for the term "impermeable" include "not permitting passage (as of a fluid) through its substance," and "preventing especially liquids to pass or diffuse through." Applicants do not believe that any further limitations including listings of what the separator plate is impermeable to are appropriate. Limitations may be appropriate where there is limited impermeability, such as in Cipollini where the plate is impermeable only to gases. This may be required for cases of limited permeability because the common usage of the term, as evidenced by the definitions above, would render the plate impermeable to liquids as well. As such, Applicants believe that the definitions for "impermeable" provided above clearly include impermeability to water. The structure of Cipollini certainly does not include this feature. Further, Cipollini actually teaches away from the general impermeability of the separator plate of the present invention.

As such, Applicants believe that the structure claimed by the present invention has not been disclosed by Cipollini. Therefore, Applicants respectfully request the panel members to withdraw the rejections of claims 1-4, 9, 10, 13-18 and 20.

Respectfully submitted,

Dated: October 11, 2005

By:   
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